

Application No: 10/612,439 Docket No.: Q170-US1

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REMARKS

Claims 1, 3-9, 65-79, and 81 were previously presented. Claim 2 was previously withdrawn. Claim 80 is currently amended. Accordingly, claims 1-9, and 65-81 are pending examination.

Rejection of Claims 1-9 and 65-81 Under 35 USC §102(e)

The rejection of claims 1-9 and 65-81 rely on the use of U.S. Patent Publication No. 2002-0033360 as prior art under 35 USC §102(e). U.S. Patent Publication No. 2002-0033360 claims priority to PCT/CA01/01319. The USPTO has provided a flowchart that illustrates when a reference is available for use as prior art under 35 USC 102(e) at <http://www.uspto.gov/web/offices/dcom/olia/aipa/102eflowchart.pdf>. This flowchart is enclosed. A review of this flowchart shows that since PCT/CA01/01319 was published in French, U.S. Patent Publication No. 2002-0033360 is not available for use as prior art under 35 USC §102(e). Note that the current situation is analogous with example 5 of MPEP706.02(f)(1) which provides the following:

All references, whether the WIPO publication, the U.S. patent application publication or the U.S. patent, of an international application (IA) that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. 102 (e) prior art date at all. ... Such references may be applied under 35 U.S.C. 102 (a) or (b) as of their publication dates, but never under 35 U.S.C. 102 (e).

Accordingly, U.S. Patent Publication No. 2002-0033360 is not available for use as prior art under 35 USC §102(e).

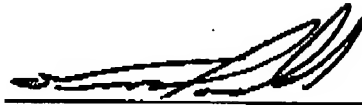
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CONCLUSION

The Examiner is encouraged to telephone the undersigned with any questions.

Respectfully submitted,

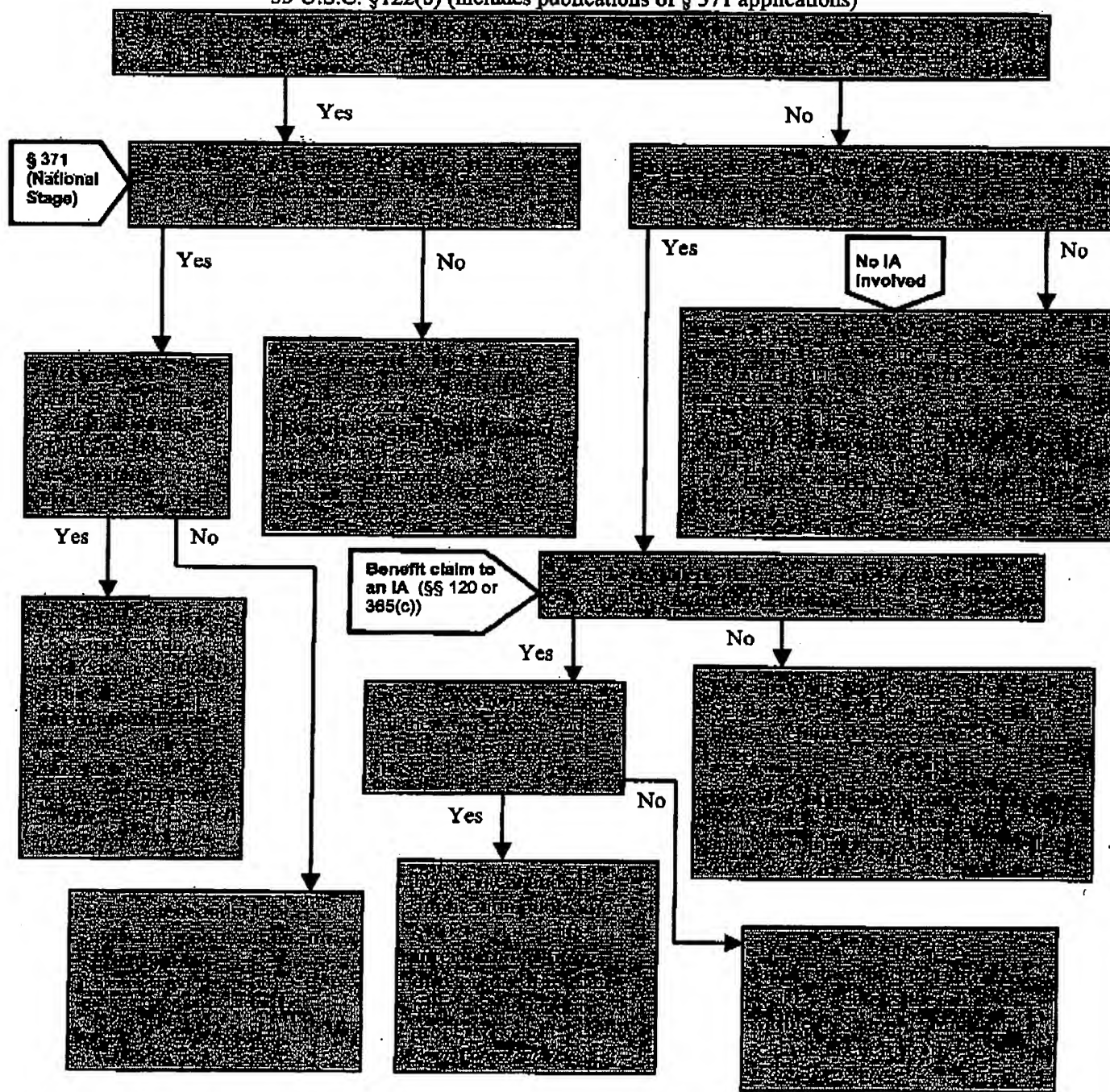


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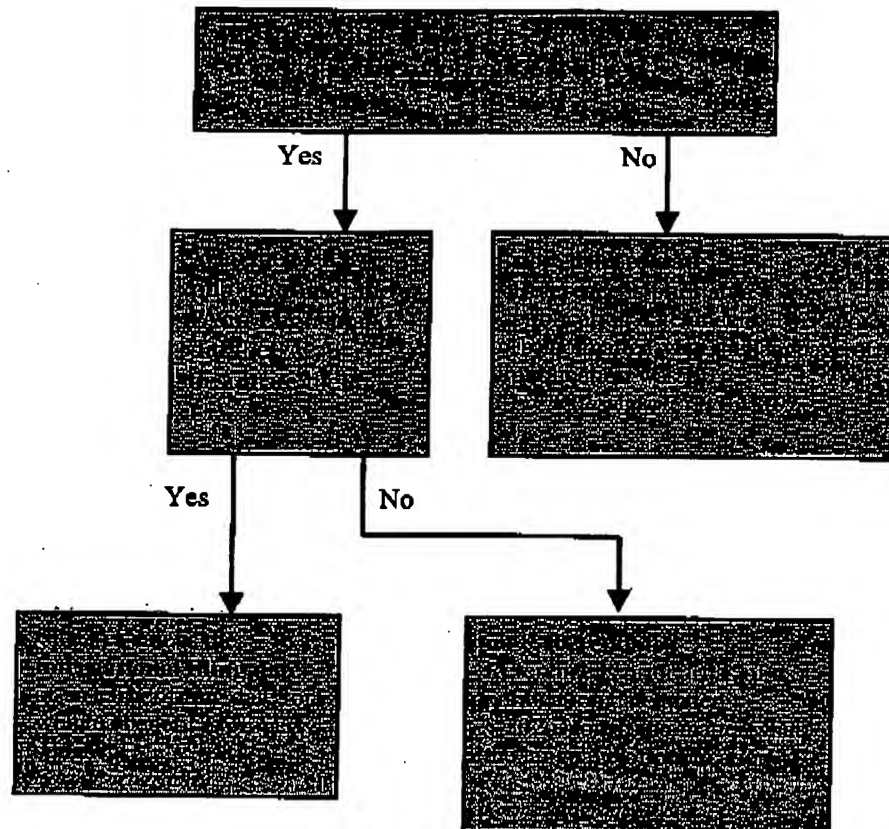
FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:**Apply to all applications and patents, whenever filed****Chart I: For U.S. patent or U.S. patent application publication under 35 U.S.C. § 122(b) (includes publications of § 371 applications)**

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

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FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart II: For WIPO publication of International Applications (IAs)



* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

Glossary of Terms:

U.S. patent application publication = pre-grant publication by the USPTO under 35 U.S.C. § 122(b)
International application (IA) = an application filed under the Patent Cooperation Treaty (PCT)
§ 371 application = an IA that has entered the national stage in the U.S. (35 U.S.C. § 371(c)(1), (2) and (4))
November 29, 2000 = the effective date for the amendments to §§ 102(e) and 374
WIPO = World Intellectual Property Organization
WIPO Publication = a publication of an IA under PCT Article 21(2) (e.g., Publication No. WO 99/12345)
§ 111(a) = provision of the patent code that states the filing requirements for nonprovisional applications
§ 111(b) = provision of the patent code that states the filing requirements for provisional applications
§ 119(e) = provision of the patent code that allows for priority claims to provisional applications
§ 119(a)-(d) = provision of the patent code that allows for priority claims to foreign applications
§ 120 = provision of the patent code that allows for benefit claims to nonprovisional applications
§ 365(c) = provision of the patent code that allows for benefit claims to international applications